

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI

In re)
BRIAN DOUGLAS FISH) Case No. 19-47779 399
Debtor)
) Chapter 7
)

**MOTION OF PEOPLES NATIONAL BANK, N.A. TO LIFT
AUTOMATIC STAY AS TO LIFE INSURANCE POLICY**

For its Motion to Lift Stay, Peoples National Bank, N.A. (“Peoples”), by counsel,
respectfully states as follows:

1. Peoples holds a claim against Debtor in the amount of \$788,446.93.
2. The claim is founded upon that certain Promissory Note dated May 21, 2009 (“Note”) made by Patricia K. Fish and Brian Fish to Peoples, as amended from time to time by eight Change in Terms Agreements (“CITs”) made by Patricia K. Fish and Brian Fish and last effective through September 21, 2012.
3. Redacted copies of the Note and, collectively, the CITs are marked as Peoples Exhibits 1 and 2 respectively and are incorporated herein by reference.
4. The Note and CITs were found to be valid and enforceable against Patricia K. Fish and Brian Fish by an Amended Judgment of the Circuit Court of St. Louis County, Missouri, entered on December 20, 2018.
5. A copy of the said Amended Judgment is marked as Peoples Exhibit 3 and is incorporated herein by reference.
6. Although Patricia K. Fish filed an appeal of the Amended Judgment, Brian K. Fish did not.
7. Peoples’ claim is secured by items that include, *inter alia*, a certain life insurance

policy (“Insurance Policy”) owned by and insuring the life of Patricia K. Fish.

8. Peoples’ security interest was created and perfected by assignment of the Insurance Policy by Patricia K. Fish and Brian Fish to Peoples on May 21, 2009.

9. Copies of said assignment, the assent of the insurer thereto, and a Policy Data Review prepared by the insurer and dated June 28, 2009, are attached collectively as Peoples Exhibit 4 and are incorporated herein by reference.

10. On information and belief, the cash value of the Insurance Policy currently exceeds \$71,900.00.

11. A Policy Data Review prepared by the insurer and dated March 27, 2020 summarizes the ownership, benefits, and other relevant information regarding the Insurance Policy. A copy is attached as Peoples Exhibit 5 and is incorporated herein by reference.

12. Pursuant to § 362(d)(1), cause exists for granting relief from the automatic stay as to the Insurance Policy, in that Debtor has failed to make any payments to Peoples on the Note since June, 2012, and the Amended Judgment found all issues in dispute between the parties in favor of Peoples (and U. S. Bank) and against Patricia K. Fish and Brian Fish.

13. Patricia K. Fish filed for relief under Chapter 7 in this Court in case no. 19-41620-705. Notice of this Motion will be provided to her attorney and the Chapter 7 Trustee in her case.

14. Although Patricia K. Fish claimed in an amended Schedule A that her residence was worth \$1.6 million, her Chapter 7 Trustee was able to obtain only \$935,000.00 as the gross sale price for the residence. Her Trustee is holding the proceeds of said sale subject to lien claims pursuant to an Order of the Court approving the said sale. Peoples holds a junior lien on the proceeds, subordinate to the lien of U. S. Bank.

15. After allowing for the amount of the proceeds that are expected to be paid to Peoples

from the sale of the residence, Peoples' secured claim will still substantially exceed the value of the Insurance Policy.

16. Pursuant to § 362(d)(2), Peoples is entitled to relief from the automatic stay as to the Insurance Policy because there is no equity in it for Debtor or for the Estate, and it is not necessary to an effective reorganization.

17. Peoples waives the deadline of § 362(e)(1).

WHEREFORE, Peoples National Bank, N.A. prays that this Court enter an order granting Peoples relief from the automatic stay as to the Insurance Policy and authorizing Peoples to exercise its rights under nonbankruptcy law and the assignment mentioned above to collect and liquidate its interest in the Insurance Policy in partial payment of the Note. Peoples further prays for such additional relief as is just and proper in the circumstances.

/s/ James S. Cole

James S. Cole, #26787
WASINGER DAMING, LC
1401 S. Brentwood Blvd., Suite 875
St. Louis, MO 63144
(314) 961-0400; fax (314) 961-2726
jcole@wasingerdaming.com

Attorneys for Peoples National Bank, N.A.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing motion and exhibits mentioned therein were filed with the Clerk of the Court for service upon the U. S. Trustee and all attorneys of record by the Court's electronic service procedure, that further copies were e-mailed to the persons with e-mail addresses indicated below, and a copy thereof was also mailed to Debtor, Patricia K. Fish, at the address stated below by first-class mail, postage prepaid, all on April 8, 2020.

/s/ James S. Cole

Office of United States Trustee by e-service

Seth A. Albin, Esq.
Albin Law
7710 Carondelet Ave., Suite 405
St. Louis, MO 63105

Chapter 7 Trustee
email: albintrustee@albinlawstl.com

William A. Catlett, Esq.
William A. Catlett, L.L.C.
9939 Gravois Road
St. Louis, MO 63123

Debtor's Attorney
email: william@catlett.biz

Brian Douglas Fish
702 Plantmore Drive
St. Louis, MO 63135

Debtor

Fredrich J. Cruse, Esq.
The Cruse Law Firm PC
P. O. Box 914
Hannibal, MO 63401

Chapter 7 Trustee for Estate of Patricia K. Fish
email: trustee@cruselaw.com

James B. Day
Law Office of James B. Day
13321 N. Outer Forty Road, Ste. 600
Chesterfield, MO 63017

Attorney for Chapter 7 Trustee Fred Cruse
email: jdaylaw@charter.net

Robert E. Eggmann, Esq.
Carmody MacDonald P.C.
120 South Central Ave., Suite 1800
Clayton, MO 63105

Attorney for Patricia K. Fish
email: ree@carmodymacdonald.com